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7 **UNITED STATES DISTRICT COURT**  
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9 **EASTERN DISTRICT OF CALIFORNIA**

10 MICHAEL EDWARD JANSEN,

11 Petitioner,

12 v.

13 JERRY OURIQUE,

14 Respondent.

Case No. 1:25-cv-00491-SAB-HC

FINDINGS AND RECOMMENDATION TO  
DISMISS GROUNDS TWO AND THREE  
OF THE PETITION AND GRANT  
PETITIONER'S MOTION TO STAY

ORDER DIRECTING CLERK OF COURT  
TO RANDOMLY ASSIGN DISTRICT  
JUDGE

15  
16 **I.**

17 **BACKGROUND**

18 Petitioner is a state prisoner currently confined at Pleasant Valley State Prison, serving an  
19 eleven-year sentence for convictions sustained in the Sutter County Superior Court. (ECF No. 1  
20 at 1.<sup>1</sup>) On April 28, 2025, Petitioner filed the instant federal petition for writ of habeas corpus.  
21 (ECF No. 1.) In Ground One, Petitioner challenges a disciplinary proceeding, for which he spent  
22 six months in administrative segregation and lost 360 days of credit, alleging that the disciplinary  
23 proceeding was in retaliation for Petitioner commencing a civil lawsuit against the California  
24 Department of Corrections and Rehabilitation (“CDCR”). (*Id.* at 5.) In Ground Two, Petitioner  
25 alleges that the CDCR took \$98.00 out of his account for a food sale but did not give him any of  
26 the items he ordered. (*Id.* at 10.) In Ground Three, Petitioner asserts that his sentence is enhanced  
27 by a prior conviction of which he is actually innocent. (*Id.* at 11.)

28 <sup>1</sup> Page numbers refer to the ECF page numbers stamped at the top of the page.

1 On June 4, 2025, the Court issued an order to show cause (“OSC”) why the petition  
2 should not be dismissed for nonexhaustion, failure to state a cognizable federal habeas claim, and  
3 as an unauthorized second or successive petition. (ECF No. 6.) On July 2, 2025, Petitioner filed  
4 his response to the OSC. (ECF No. 7.)

II.

## DISCUSSION

7 Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a  
8 habeas petition and allows a district court to dismiss a petition before the respondent is ordered  
9 to file a response, if it “plainly appears from the petition and any attached exhibits that the  
10 petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing Section 2254  
11 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

## A. Ground Two

## 1. Cognizability in Federal Habeas Corpus

14 By statute, federal courts “shall entertain an application for a writ of habeas corpus in  
15 behalf of a person in custody pursuant to the judgment of a State court only on the ground that he  
16 is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.  
17 § 2254(a). A claim falls within the “core of habeas corpus” when a prisoner challenges “the fact  
18 or duration of his confinement” and “seeks either immediate release from that confinement or the  
19 shortening of its duration.” Preiser v. Rodriguez, 411 U.S. 475, 489 (1973). The Ninth Circuit  
20 has held that a “state prisoner’s claim [that] does not lie at ‘the core of habeas corpus’ . . . must  
21 be brought, ‘if at all,’ under § 1983.” Nettles, 830 F.3d at 934 (quoting Preiser, 411 U.S. at 487;  
22 Skinner v. Switzer, 562 U.S. 521, 535 n.13 (2011)). Therefore, if “success on [Petitioner]’s  
23 claims would not necessarily lead to his immediate or earlier release from confinement,  
24 [Petitioner]’s claim does not fall within ‘the core of habeas corpus,’ and he must instead bring  
25 his claim under § 1983.” Nettles, 830 F.3d at 935 (quoting Skinner, 562 U.S at 535 n.13).

26 In Ground Two, Petitioner challenges the removal of \$98.00 from his account. Petitioner  
27 "believes that the taking of money out of his account constitutes cruel and unusual punishment  
28 which is a violation of the Eighth Amendment of the United States Constitution so thereby

1 triggering relief by habeas corpus petition.” (ECF No. 7 at 2–3.) Although Petitioner asserts an  
 2 Eighth Amendment constitutional violation, “[b]ecause success on [Ground Two] would not  
 3 necessarily lead to his immediate or earlier release from confinement, [Petitioner]’s claim does  
 4 not fall within ‘the core of habeas corpus,’ and he must instead bring his claim under § 1983.”  
 5 Nettles, 830 F.3d at 935.

6       2. Conversion to § 1983 Action

7       “If the complaint is amenable to conversion on its face, meaning that it names the correct  
 8 defendants and seeks the correct relief, the court may recharacterize the petition so long as it  
 9 warns the *pro se* litigant of the consequences of the conversion and provides an opportunity for  
 10 the litigant to withdraw or amend his or her complaint.” Nettles, 830 F.3d at 936 (quoting Glaus  
 11 v. Anderson, 408 F.3d 382, 388 (7th Cir. 2005)). The Court notes, however, that habeas corpus  
 12 and prisoner civil rights actions differ in a variety of respects, such as the proper defendants,  
 13 filing fees, exhaustion requirements, and restrictions on future filings (e.g., the Prison Litigation  
 14 Reform Act’s three-strikes rule). Nettles, 830 F.3d at 936 (citing Robinson v. Sherrod, 631 F.3d  
 15 839, 841 (7th Cir. 2011); Glaus, 408 F.3d at 388).

16       Due to these differences and the disadvantages that recharacterization may have on  
 17 Petitioner’s claim, the Court finds that it would be inappropriate to construe the habeas petition  
 18 as a civil rights complaint under 42 U.S.C. § 1983. The Court notes that the filing fee for § 1983  
 19 civil rights cases is \$350, and Petitioner is required to pay the full amount by way of deductions  
 20 from income to Petitioner’s trust account, even if granted *in forma pauperis* status. See 28 U.S.C.  
 21 § 1915(b)(1). Moreover, the petition names the Warden as Respondent and thus, does not name  
 22 the correct defendant. See Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009) (“[A] plaintiff must plead  
 23 that each Government-official defendant, through the official’s own individual actions, has  
 24 violated the Constitution.”). This conclusion, however, does not preclude Petitioner from  
 25 pursuing his claim in a properly filed civil action brought pursuant to 42 U.S.C. § 1983.  
 26 Accordingly, Ground Two should be dismissed.

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1                   **B. Ground Three**

2                   A federal court must dismiss a second or successive petition that raises the same grounds  
3 as a prior petition. 28 U.S.C. § 2244(b)(1). The court must also dismiss a second or successive  
4 petition raising a new ground unless the petitioner can show that (1) the claim rests on a new,  
5 retroactive, constitutional right or (2) the factual basis of the claim was not previously  
6 discoverable through due diligence, and these new facts establish by clear and convincing  
7 evidence that but for the constitutional error, no reasonable factfinder would have found the  
8 applicant guilty of the underlying offense. 28 U.S.C. § 2244(b)(2)(A)–(B).

9                   However, it is not the district court that decides whether a second or successive petition  
10 meets these requirements. Section 2244(b)(3)(A) provides: “Before a second or successive  
11 application permitted by this section is filed in the district court, the applicant shall move in the  
12 appropriate court of appeals for an order authorizing the district court to consider the  
13 application.” In other words, Petitioner must obtain leave from the Ninth Circuit before he can  
14 file a second or successive petition in the district court. See Felker v. Turpin, 518 U.S. 651, 656–  
15 57 (1996). This Court must dismiss any second or successive petition unless the Court of  
16 Appeals has given Petitioner leave to file the petition because a district court lacks subject-matter  
17 jurisdiction over a second or successive petition. Burton v. Stewart, 549 U.S. 147, 157 (2007).

18                   In Ground Three, Petitioner challenges his 2020 Sutter County Superior Court sentence  
19 on the ground that it was unlawfully enhanced by a 2009 Sonoma County Superior Court  
20 conviction of which he is actually innocent. (ECF No. 1 at 1, 12.) Petitioner previously sought  
21 federal habeas relief in this Court with respect to the 2020 Sutter County Superior Court  
22 judgment. See Jansen v. Smith, No. 2:23-cv-02018-EFB (dismissed as untimely).<sup>2</sup> Accordingly,  
23 the Court finds that the instant petition is “second or successive” under § 2244(b). See McNabb  
24 v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009) (holding “dismissal of a first habeas petition for  
25 untimeliness presents a ‘permanent and incurable’ bar to federal review of the underlying  
26 claims,” and thus renders subsequent petitions “second or successive”). Petitioner claims that

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2                   The Court may take judicial notice of its own records in other cases. United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 Ground Three is based on newly discovered evidence and thus, falls into one of § 2244(b)(2)'s  
2 exceptions. However, "a petitioner cannot bring a second or successive habeas application  
3 directly to the district court. Instead, he must first go to the court of appeals and make a 'prima  
4 facie showing' that the petition satisfies one of § 2244(b)(2)'s exceptions, and *that* court has to  
5 grant authorization for the petitioner to proceed in district court." *Rivers v. Guerrero*, 605 U.S.  
6 443, 450 (2025). Petitioner must obtain prior leave from the Ninth Circuit to file a petition  
7 raising Ground Three. Accordingly, Ground Three should be dismissed.

8       **C. Ground One**

9       1. Exhaustion

10       A petitioner in state custody who is proceeding with a petition for writ of habeas corpus  
11 must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based  
12 on comity to the state court and gives the state court the initial opportunity to correct the state's  
13 alleged constitutional deprivations. *Coleman v. Thompson*, 501 U.S. 722, 731 (1991); *Rose v.*  
14 *Lundy*, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion requirement by  
15 providing the highest state court with a full and fair opportunity to consider each claim before  
16 presenting it to the federal court. *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); *Duncan v.*  
17 *Henry*, 513 U.S. 364, 365 (1995); *Picard v. Connor*, 404 U.S. 270, 276 (1971).

18       Here, Petitioner states that he has exhausted all administrative remedies with respect to  
19 Ground One and is "in the process of filing in state court." (ECF No. 1 at 5.) Petitioner concedes  
20 that Ground One is unexhausted. Petitioner filed the petition "so as not to be found at a later date  
21 to be untimely within the strict rules under the AEDPA" and seeks a stay. (ECF No. 7 at 2.)

22       2. Stay

23       Under *Rhines v. Weber*, 544 U.S. 269 (2005), "stay and abeyance" is available only in  
24 "limited circumstances," and only when: (1) there is "good cause" for the failure to exhaust; (2)  
25 the unexhausted claims are not "plainly meritless"; and (3) the petitioner did not intentionally  
26 engage in dilatory litigation tactics. 544 U.S. at 277–78. "The caselaw concerning what  
27 constitutes 'good cause' under *Rhines* has not been developed in great detail." *Dixon v. Baker*,  
28 847 F.3d 714, 720 (9th Cir. 2017). "The Supreme Court has addressed the issue only once, when

1 it noted that a ‘petitioner’s reasonable confusion about whether a state filing would be timely  
 2 will ordinarily constitute ‘good cause’ for him to file in federal court.”” Blake v. Baker, 745 F.3d  
 3 977, 980 (9th Cir. 2014) (quoting Pace v. DiGuglielmo, 544 U.S. 408, 416 (2005)).<sup>3</sup> The Ninth  
 4 Circuit has “held that good cause under Rhines does not require a showing of ‘extraordinary  
 5 circumstances,’ Jackson v. Roe, 425 F.3d 654, 661–62 (9th Cir. 2005), but that a petitioner must  
 6 do more than simply assert that he was ‘under the impression’ that his claim was exhausted,  
 7 Wooten v. Kirkland, 540 F.3d 1019, 1024 (9th Cir. 2008).” Dixon, 847 F.3d at 720.

8       “A petitioner who is without counsel in state postconviction proceedings cannot be  
 9 expected to understand the technical requirements of exhaustion and should not be denied the  
 10 opportunity to exhaust a potentially meritorious claim simply because he lacked counsel.” Dixon,  
 11 847 F.3d at 720. Thus, the Ninth Circuit has found that for federal habeas petitioners who  
 12 conducted their state post-conviction proceedings pro se, “the first element of the Rhines test can  
 13 easily be established to the extent that they were without counsel.” Id. at 722. Here, it appears  
 14 that Petitioner has been conducting his state post-conviction proceedings pro se. Accordingly, the  
 15 Court finds that Petitioner has satisfied Rhines’s good cause requirement.

16       “A federal habeas petitioner [also] must establish that at least one of his unexhausted  
 17 claims is not ‘plainly meritless’ in order to obtain a stay under Rhines.” Dixon, 847 F.3d at 722.  
 18 “In determining whether a claim is ‘plainly meritless,’ principles of comity and federalism  
 19 demand that the federal court refrain from ruling on the merits of the claim unless ‘it is perfectly  
 20 clear that the petitioner has no hope of prevailing.’” Id. (quoting Cassett v. Stewart, 406 F.3d  
 21 614, 624 (9th Cir. 2005)). Ground One appears on its face to not be “plainly meritless.”  
 22 Petitioner challenges a disciplinary proceeding, alleging that the disciplinary proceeding was in  
 23 retaliation for Petitioner commencing a civil lawsuit against the CDCR. Petitioner alleges that he  
 24 was involved in a fight and the following day Petitioner was taken to administrative segregation  
 25 and told that Weaver, one of the other inmates involved in the fight, sustained serious bodily

26       <sup>3</sup> In Pace, the Supreme Court noted that a solution to the “predicament” of “a ‘petitioner trying in good faith to  
 27 exhaust state remedies . . . litigat[ing] in state court for years only to find out at the end that he was never ‘properly  
 28 filed,’” and thus that his federal habeas petition is time barred” is “filing a ‘protective’ petition in federal court and  
 asking the federal court to stay and abey the federal habeas proceedings until state remedies are exhausted.” 544  
 U.S. at 416 (citations omitted).

1 injury. Petitioner saw Weaver four days later and Weaver was fine. Petitioner spoke with  
2 Weaver, who told Petitioner “he was fine and didn’t understand why they were doing all this.”  
3 The only evidence produced to Petitioner was a CDCR form with the alleged injuries written  
4 with an unknown signature from medical personnel. At the disciplinary hearing, Petitioner asked  
5 the hearing officer for evidence, such as documentation from a hospital or medical personnel,  
6 that showed Weaver sustained serious bodily injury. The hearing officer “didn’t have anything”  
7 and found Petitioner guilty. (ECF No. 1 at 5–6.) The Court construes Petitioner’s allegations as  
8 asserting a due process claim that “some evidence” does not support the decision of the hearing  
9 officer. See Superintendent v. Hill, 472 U.S. 445, 455 (1985) (“We hold that the requirements of  
10 due process are satisfied if some evidence supports the decision by the prison disciplinary board  
11 to revoke good time credits.”).

12 As set forth above, Petitioner has established “good cause” for his failure to exhaust, and  
13 Ground One appears on its face to not be “plainly meritless.” Finally, there is no indication in the  
14 record that Petitioner engaged in “intentionally dilatory litigation tactics.” Rhines, 544 U.S. at  
15 278. Accordingly, the Court finds that a stay is warranted

16 **III.**

17 **RECOMMENDATION & ORDER**

18 Based on the foregoing, the Court HEREBY RECOMMENDS that:

- 19 1. Grounds Two and Three of the petition be DISMISSED; and  
20 2. Petitioner’s motion to stay be GRANTED.

21 Further, the Clerk of Court is DIRECTED to randomly assign this action to a District  
22 Judge.

23 This Findings and Recommendation is submitted to the assigned United States District  
24 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
25 Rules of Practice for the United States District Court, Eastern District of California. Within  
26 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file  
27 written objections with the Court, **limited to fifteen (15) pages in length, including any**  
28 **exhibits**. Such a document should be captioned “Objections to Magistrate Judge’s Findings and

1 Recommendation.” The assigned District Judge will then review the Magistrate Judge’s ruling  
2 pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within  
3 the specified time may waive the right to appeal the District Court’s order.

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5 IT IS SO ORDERED.

6 Dated: August 21, 2025



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7 STANLEY A. BOONE  
8 United States Magistrate Judge

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